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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.170 of 2009**

Hariram, S/o Shri Shivilal Yadav, aged about 45 years, R/o Village Lata,
Police Chouki Bankimongara, Tahsil Katghora, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Chouki Bankimongara, Tahsil Katghora,
District Korba, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vikas Pandey, Advocate
For State/Respondent	:	Shri Ravindra Agrawal, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**Per Arvind Singh Chandel, J.****6.11.2017**

1. This appeal is directed against the judgment dated 27.11.2008 passed in Sessions Trial No.11 of 2008 by the Additional Sessions Judge, Katghora, District Korba convicting the accused/Appellant under Section 302 of the Indian Penal Code and sentencing him with life imprisonment and fine of Rs.2,000/- with default stipulation.
2. Brief facts of the case are that on 17.10.2007 at about 6:30 p.m., Nathuram (PW4) and Hinduram (PW5), on hearing the screaming of Parasram (deceased), came out of their houses and went to the lane. They saw the accused/Appellant running away with a *Hansiya* (Sickle). Parasram told them that the Appellant assaulted him with the

Hansiya. Nathuram called Bedram (PW1), son of Parasram. Ramprasad (PW2) also came there. Before all of them, Parasram again told that the Appellant, after assaulting him with the *Hansiya* ran away. Bedram took his injured father to NTPC Hospital, Darri, Korba where he died at about 9:00 p.m. Unnumbered Morgue Intimation (Ex.P1) and unnumbered First Information Report (Ex.P2) were recorded on the information of Bedram at Police Station Darri. Thereafter, numbered Morgue Intimation (Ex.P16) and numbered FIR (Ex.P15) were recorded at Police Station Bankimongara. Inquest (Ex.P4) was recorded. Post mortem was conducted by Dr. R.S. Kanwar (PW8). He gave his report (Ex.P12). He found an incised wound measuring 3" x 1" x 4.5" (deep) situated 2" below the both sides of epigastrium (transverse) and a transverse incised wound on the middle phalanx of left little to index fingers. He also found that the liver was punctured from front to back measuring 4" x 3" x 3" shallow and right ½" and the whole abdominal cavity was full of blood. He opined that the cause of death was haemorrhagic shock due to large incised wound of liver. During investigation, on the basis of memorandum statement (Ex.P5) of the Appellant, the *Hansiya* was seized from the Appellant vide Ex.P6. The *Hansiya* was examined by Dr. R.S. Kanwar (PW8). He gave his report (Ex.P13) in which he opined that the injuries sustained by the deceased could be caused by the said *Hansiya*. Seized articles were sent to the Forensic Science Laboratory vide Ex.P20. No report from the FSL is placed on the record. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 302 of the

Indian Penal Code. Charge was framed against him under Section 302 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 11 witnesses. Statement of the Appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, pleaded innocence and false implication. No defence witness has been examined on his behalf.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Appellant has been convicted solely on the basis of so called oral dying declaration of the deceased made before Bedram (PW1), Ramprasad (PW2), Nathuram (PW4) and Hinduram (PW5). But, all these witnesses are closely related to the deceased. Merely on the basis of their evidence, the Appellant cannot be convicted. He further argued that authenticity of the dying declaration itself is doubtful because at the time when these witnesses saw the deceased, he was not in a position to make any statement. Physical condition of the deceased was not as such where he could have made any such statement. Memorandum and seizure witnesses have also not supported the case of the prosecution. He, therefore, prays that the Appellant is entitled to get benefit of doubt.
6. On the other hand, Learned Counsel appearing for the State, supporting the impugned judgment, has submitted that there is no legal bar in convicting the Appellant solely on the basis of oral dying

declaration provided the same inspires confidence of the Court. It was further argued that unnumbered morgue intimation (Ex.P1) and unnumbered FIR (Ex.P2) were recorded at the instance of Bedram (PW1), son of the deceased very promptly and as such there was no occasion for Bedram to cook-up and falsely implicate the Appellant. The evidence is there on record to show that when the deceased was attended by witnesses Bedram (PW1), Ramprasad (PW2), Nathuram (PW4) and Hinduram (PW5), he was alive and could answer their questions.

7. We have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
8. Bedram (PW1), son of the deceased has deposed that in the evening of 17-10-2007, he returned home from his duties. At that time, Nathuram (PW4) came to him and informed that the Appellant had assaulted his father Parasram with a *Hansiya*, as a result of which his intestine had come out. He has further stated that immediately thereafter, he along with Nathuram (PW4) went to the place of occurrence. He saw that his father had fallen down in the lane situated near the house of the Appellant and his intestine had come out. When he inquired about the incident from his father (deceased), he told him that the Appellant had assaulted him with a *Hansiya*. He has further stated that Nathuram (PW4), Village Kotwar Ramprasad (PW2) and Hinduram (PW5) also asked his father about the incident. His father told them the same thing. He has further stated that he took his father to the hospital where he died at about 9:00 p.m. In the

night itself, he went to Police Station Darri and lodged unnumbered Morgue Intimation (Ex.P1) and unnumbered FIR (Ex.P2).

9. Ramprasad (PW2), Nathuram (PW4) and Hinduram (PW5) have also supported the above statement of Bedram (PW1). Nathuram has stated that at about 6:00 p.m., he was at his house. Parasram shouted that he was being assaulted. Having heard the shout, he went to the place of occurrence. Parasram was lying down in the lane. Parasram told him that the Appellant had assaulted him with a *Hansiya*. On being asked by Parasram, he went to his house and called his son Bedram (PW1). He has further deposed that on arrival of Bedram to the place of occurrence, Parasram again told about the incident in his presence as well as the presence of Ramprasad (PW2) and Hinduram (PW5) that the Appellant had assaulted him with a *Hansiya*. Ramprasad (PW2) and Hinduram (PW5) have also stated that when they reached the place of occurrence, they saw that Parasram was lying down in the lane and his intestine had come out. They have categorically stated that on being inquired, Parasram told them only that the Appellant had assaulted him with a *Hansiya*.

10. Budhwar Sai (PW3) and Peshiram (PW9) are the witnesses of memorandum (Ex.P5) and seizure memo (Ex.P6), but they have not supported the case of the prosecution and have been declared hostile. Patwari Vishambher Singh (PW6) prepared a spot-map (Ex.P10). Sweeper Kunwar Singh (PW7), after the post mortem examination, had taken the clothes of the deceased to the police station which were seized vide Ex.P11. Dr. R.S. Kanwar (PW8) performed post mortem on the dead body on 18.10.2007 and he gave his report (Ex.P12). In

his report, he found the injuries as stated in paragraph 2 of this judgment. He opined that the cause of death was haemorrhagic shock due to large incised wound of liver. He has deposed that he had also examined the seized article *Hansiya* (Sickle) and had given his report (Ex.P13). In this report, he has opined that the injuries sustained by the deceased could be caused by the said *Hansiya*. On 17.10.2007, being informed by Bedram (PW1), Assistant Sub-Inspector Balram Prasad Sahu (PW10) had recorded unnumbered Morgue Intimation (Ex.P1) and unnumbered FIR (Ex.P2) at Police Station Darri. Inspector S.K. Thakur (PW11) is the witness who investigated the offence in question.

11. A close scrutiny of the evidence available on record makes it clear that except the oral dying declaration of the deceased made before Bedram (PW1), Ramprasad (PW2), Nathuram (PW4) and Hinduram (PW5), there is no other legally admissible evidence connecting the Appellant with the crime in question.

12. Law in respect of oral dying declaration is well settled. In **(2010) 6 SCC 566 (Puran Chand v. State of Haryana)**, it has been stated that a mechanical approach in relying upon a dying declaration, just because it is there, is extremely dangerous and it is the duty of the Court to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. The Court further opined that

the law is now well settled that a dying declaration which has been found to be voluntary and truthful and which is free from any doubts can be the sole basis for convicting the accused.

13. In **(2002) 6 SCC 710 (Laxman v. State of Maharashtra)**, it is observed as under:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to

writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to the Constitution Bench. In *Paparambaka Rosamma v. State of A.P.*, (1999) 7 SCC 695, the dying declaration in question had been recorded by a Judicial Magistrate and the declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in *Koli Chunilal Savji v. State of Gujarat*, (1999) 9 SCC 562, it was held that the ultimate test is whether the dying

declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The Court relied upon the earlier decision in *Ravi Chander v. State of Punjab*, (1998) 9 SCC 303, wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise.

5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur v. State of Punjab*, (1999) 6 SCC 545, wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma v. State of A.P.*, (1999) 7 SCC 695 (at SCC p. 701, para 8) to the effect that

“in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration”

has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the

dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma v. State of A.P.*, (1999) 7 SCC 695, must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat*, (1999) 9 SCC 562.”

14. In **(2010) 12 SCC 324 (State of Uttar Pradesh v. Krishna Master)**, it is observed as under:

“71. There is yet another evidence in the form of oral dying declaration which implicates the respondents in the murder of six persons i.e. oral dying declaration made by deceased Baburam before his brother Jhabbulal. The High Court committed serious error in disbelieving the oral dying declaration made by deceased Baburam before his real brother Jhabbulal (PW1) implicating the respondents as his assailants. The reason given by the High Court for disbelieving the oral dying declaration was that it was not mentioned by witness Jhabbulal either in his FIR or in his statement recorded under Section 161 CrPC. As observed earlier FIR need not be an encyclopaedia of minute details of the incident nor is it necessary to mention therein the evidence on which the prosecution proposes to rely at the trial. The basic purpose of filing FIR is to set the criminal law into motion and not to state all the minute details therein.

72. It is relevant to notice that six brutal and gruesome murders had taken place wherein firearms were used. The hard reality of life is that the person who has lost kith and kin in an horrific incident is likely to suffer great shock and therefore law would not expect him to mention minutest details either in his FIR or statement under Section 161. The question before the Court is whether the assertion made by the witness that soon after the incident he had gone to the place where his injured brother was lying and on enquiry by him, his brother had told him that the respondents were his assailants, inspires confidence of the Court.

73. Reading the evidence of the witness as a whole, this Court points that it has a ring of truth in it. There is nothing improbable if a brother approaches his injured brother and tries to know from him as to how he

had received the injuries nor is it improbable that on enquiry being made the injured brother would not give reply/information sought from him. The assertion by witness Jhabbulal that after the incident was over he had gone near his injured brother and tried to know as to who were his assailants, whereupon his injured brother had replied that the appellants (*sic* respondents) had caused injuries to him, could not be effectively challenged during cross-examination of the witness nor could it be brought on record that because of the nature of the injuries received by Baburam he would not have survived even for a few minutes and must have died immediately on the receipt of the injuries.”

15.Regard being had to the aforesaid principles, we shall now advert to the facts of the instant case to see whether the oral dying declaration was truthful and made in a conscious state of mind.

16.First, Nathuram (PW4), having heard the screaming of the deceased went to the place of occurrence. He saw that the deceased was lying down at the place of occurrence and he was in injured condition. He also saw that the intestine of the deceased had come out. As per his statement, at the first instance, the deceased told him that he was assaulted by the Appellant with the *Hansiya*. Thereafter, the deceased asked him to call his son Bedram (PW1). He called Bedram. Bedram has supported the above version and stated that when he reached the place of occurrence, he also saw that his father was lying down in injured condition and his intestine had come out. Statement of Bedram (PW1) reveals that after his going back, his father again told Ramprasad (PW2), Nathuram (PW4) and Hinduram (PW5) about the incident that he was assaulted by the Appellant with the *Hansiya*. Ramprasad (PW2) and Hinduram (PW5) have also categorically

supported the above statement of Bedram and deposed that deceased Parasram had told them about the incident. Immediately after the incident, unnumbered Morgue Intimation (Ex.P1) and unnumbered FIR (Ex.P2) were lodged by Bedram (PW1) in which he has mentioned about the assault made to his father by the Appellant with the *Hansiya*. Apart from that, during cross-examination, when suggestion was put to all the above four witnesses that the deceased had fallen unconscious and was not in a position to speak, the same was denied by them. They have categorically stated that the deceased was well conscious and was talking clearly. All the above four prosecution witnesses have remained firm in their statements. Their evidence in cross-examination does not show that there was any previous enmity between them and the Appellant. Therefore, there is no reason to disbelieve their statements.

17. For the reasons stated above, we are of the opinion that the dying declaration made by the deceased was voluntary and made in a fit state of mind and there is no reason to disbelieve the same. Therefore, we find that there is no substance in the argument of Learned Counsel for the Appellant that the dying declaration is doubtful.

18. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Arvind Singh Chandel)
Judge